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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/658,671	09/08/2003	Mark F. Cotton	12587-046001 / D03-047/01	2189
26212 7590 05/02/2008 FISH & RICHARDSON P.C. P.O. BOX 1022 MINNEAPOLIS, MN 55440-1022			EXAMINER POND, ROBERT M	
			ART UNIT 3625	PAPER NUMBER
			MAIL DATE 05/02/2008	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/658,671	<b>Applicant(s)</b> COTTON ET AL.	
	<b>Examiner</b> Robert M. Pond	<b>Art Unit</b> 3625	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 08 September 2003.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-25 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-25 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 9/08/03 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>12/03;6/04;10/07;12/07</u> .                                  | 6) <input type="checkbox"/> Other: _____                          |

## DETAILED ACTION

### *Specification*

1. The specification has not been checked to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the specification.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. **Claims 1-12 and 15-25 are rejected under 35 USC 102(e) as being anticipated by Nowers (US 2003/0033205).**

Nowers teaches all the limitations of claims 1-12 and 15-25. For example, Nowers discloses a system operated by a third-party (i.e. connection provider) that facilitates interaction between online Internet retailers/web merchants/e-tailers and vendors (i.e. B2B) in support of business-to-consumer (B2C) commerce by the system between the retailers/web merchants/e-tailers and online consumers. See at least abstract; 0072-0077. Nowers further discloses:

Art Unit: 3625

- Regarding claim 1. receiving information describing one or more items for sale by the seller; vendors register with the system and submit information describing product to be sold by one or more Internet retailers/web merchants/e-tailers. See at least 0072-0074.
- Regarding claim 1. facilitating a sale of the items through one or more online sales channels; Internet retailers/web merchants/e-tailers sales channels. See at least 0002; 0005; 0007; 0010; 0044.
- Regarding claim 1. and facilitating fulfillment of sold items through one or more fulfillment centers controlled by a connection provider, at least one fulfillment center being operated with respect to the sold items according to one or more parameters tailored to the sold items. central facility managed by the third-party fulfillment system operation pools inventory from multiple vendors for storage, assembly and shipping; assembly with regard to size and weight.. See at least 0031; 0037; 0038; 0044; 0073; 0113; 0119.
- Regarding claim 2. goods. See at least 0034-0049; 0073-0076.
- Regarding claim 3. operating the fulfillment center with respect to the sold items according to one or more parameters tailored to the sold items comprises performing preparation activities in connection with fulfilling orders for the sold items. assembly with regard to size and weight. See at least 0113; 0119. rework. See at least 0116.

- Regarding claims 4 and 6. The method of claim 3 wherein the preparation activities are specific to the type of items being sold. The method of claim 3 wherein the preparation activities comprise activities related to fragmented inventory. System serves as a returns center and enters information pertaining to reworked customer returns. Note: reworked returns represent fragmented inventory. See at least 0113; 0116; 0112.
- Regarding claim 5. The method of claim 3 wherein the preparation activities comprise refurbishment activities. rework activities. See at least 0116.
- Regarding claim 7. operating the fulfillment center with respect to the sold items according to one or more parameters tailored to the sold items comprises tailoring storage or handling characteristics of the fulfillment center to the type of items sold. System serves as a returns center and enters information pertaining to reworked customer returns. Note: Implies third-party operator is authorized to handle rework. See at least 0113; 0116; 0112.
- Regarding claim 8. operation of the fulfillment center with respect to the sold items according to one or more parameters tailored to the sold items comprises (i) performing preparation activities in connection with fulfilling orders for the items split shipping authorized by retailer or permitting backordering. See at least 0098. and (ii) tailoring storage or handling characteristics of the fulfillment center to the type of items sold. System

serves as a returns center and enters information pertaining to reworked customer returns. Note: Implies third-party operator is authorized to handle rework. See at least 0113; 0116; 0112.

- Regarding claim 9. operation of the fulfillment center with respect to the sold items according to one or more parameters tailored to the sold items comprises an activity other than (i) performing preparation activities in connection with fulfilling orders for the items or (ii) tailoring storage or handling characteristics of the fulfillment center to the type of items sold. Inventory replenishment requests. See at least 0092;
- Regarding claim 10. the connection provider comprises a non-title-taking intermediary that coordinates fulfillment of the sold items. consignment inventory. See at least 0044; 0073; 0089.
- Regarding claim 11. facilitating a sale of the items includes providing customer service on behalf of one or more sellers. customer CSR (i.e. customer service rep); communicating with customer. See at least 0192.
- Regarding claim 16. receiving information comprises receiving a product definition file from a seller describing the items to be sold at a SKU level. SKU level. See at least 0073; 0090; 0096; 0123.
- Regarding claim 12. The method of claim 11 wherein facilitating a sale of the items further comprises: providing billing services and providing collection services.; bills customers and settles with vendors and Internet retailers; invoicing retailer for additional charges. See at least 0171; 017;

0204. Note: instant specification does not provide specificity as to type of collection services. Nowers collects payments.

- Regarding claim 15. The method of claim 11 wherein facilitating a sale of the items further comprises: developing a selling strategy for the items being sold; strategy- products from multiple vendors arrive in a single shipment from a common pooled inventory repository. Benefits- cost to customer for multiple shipments are eliminated and customers only need to send returns to a single location. See at least 0048. managing orders and transportation of the items being sold; and managing inventory for the items being sold. See at least 0089; 0093; 0098; 0099.
- Regarding claims 17 and 18. receiving information comprises receiving product description information from an entity other than the seller, wherein the entity other than the seller comprises a fragmented inventory fulfillment center. System serves as a returns center and enters information pertaining to reworked customer returns. Note: reworked returns represent fragmented inventory. See at least 0113; 0116; 0112.
- Regarding claims 19-25. Rejections are based on the disclosures as noted above

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

**3. Claims 13 and 14 are rejected under 35 USC 103(a) as being unpatentable over Nowers (US 2003/0033205) in view of Amazon (PTO-892, Item: V).**

- Regarding claim 13. Nowers teaches all the above as noted under the 102(e) rejection and teaches facilitating sales by i) providing listing tools; vendors use the system to list products available for resale by Internet retailers and Internet retailers use the system to list vendor products to sell via the system (see at least 0073-0074) and ii) monitoring a progress of the selling performance of the items (see at least 0001; 0021; 0027; 0047; 0077; 0096) and further teaches Amazon.com as a sales channel. Although Nowers does not mention providing online auction capabilities, Amazon on the other hand teaches Amazon.com helping online sellers become effective marketers using its online auction services. U: see at least pages 1 and 2. One of ordinary skill in the art at time the invention was made would have recognized that applying the known techniques of Amazon to provide online auction capabilities would have yielded predictable results and resulted in an improved system. It would have

been recognized that applying the known techniques of Amazon to the teachings of Nowers would have yielded predictable results because the level of ordinary skill in the art demonstrated by the references applied shows the ability to incorporate such data processing features into similar systems. Obviousness under 35 USC 103 in view of the Supreme Court decision *KSR International Co. v. Teleflex Inc.*

- Regarding claim 14. Nowers teaches preparing information about one or more items. See at least 0102-0131. Rejection of claim 14 is based on the rationale of parent claim 13 as noted above.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure:

Accenture: "eBay, Accenture to link consumers to manufacturer' and retailers' inventories," Electronic Commerce New, 13 May 2002, v7i10pg1, Proquest #119400039, 3pgs; teaches "Connection to eBay", which will be owned and operated by Accenture, allows sellers to tap into a wide range of enhanced tools and services including sales strategies, high-volume listing capabilities, customer service and support, checkout, payment and fulfillment processes.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert M. Pond whose telephone number is 571-272-6760. The examiner can normally be reached on 8:30AM-5:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. Jeff Smith can be reached on 571-272-6763. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Robert M. Pond/  
Primary Examiner, Art Unit 3625  
April 30, 2008